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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

GENE RAPHAEL BELL,

Defendant and Appellant.

E065812

(Super.Ct.No. CR29424)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.

Affirmed.

Janice R. Mazur, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant, Gene Raphael Bell, filed a petition for resentencing pursuant to Penal Code section 1170.18,¹ which the court denied. After defendant filed a

¹ All further statutory references are to the Penal Code unless otherwise indicated.

notice of appeal, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and identifying one potentially arguable issue: whether sufficient evidence supported the court's determination that the business defendant was convicted of attempting to burglarize was closed at the time of the offense. We affirm.

I. PROCEDURAL HISTORY

On June 6, 1988, the People charged defendant by felony complaint with burglary (count I; § 459) and false representation of identity to a police officer (count II; § 148.9, subd. (a)). On the same date, defendant pled guilty to an amended count I charge of attempted burglary. (§§ 664, 459.) The court sentenced defendant to eight months' imprisonment.

On July 21, 2015, defendant filed a petition for resentencing. In a response dated September 23, 2015, the People declared that a hearing should be set. At the hearing on February 26, 2016, defendant's counsel noted the police report reflected that defendant was caught running from a business that was closed, the building's silent alarm was going off, and the building's glass door had been found to be cut.

The court denied the petition because defendant was convicted of attempting to burglarize a closed business.² In his request for a certificate of probable cause defendant

² Section 1170.18 permits a defendant who was convicted of a felony offense which would have been a misdemeanor had the act which added that section been in effect at the time the defendant committed the offense, to seek reduction of the offense to
[footnote continued on next page]

noted: “[A] theft never took place because the Defendant never entered the closed business.”

II. DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues. (*People v. Sherow* (2015) 239 Cal.App.4th 875, 880 [defendant bears the burden of proof on a petition for resentencing].)

III. DISPOSITION

The judgment is affirmed.

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McKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.

SLOUGH
J.

[footnote continued from previous page]

a misdemeanor. The act added section 459.5, which reduced from a felony to a misdemeanor the offense of entering into a commercial establishment open during regular business hours for the purpose of intending to take property valued at \$950 or less.